

SEVENTY-THIRD DAY
(Wednesday, May 17, 1995)

The Senate met at 9:30 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

A quorum was announced present.

The Reverend David Daniels, Associate Pastor, First Evangelical Free Church, Austin, offered the invocation as follows:

Heavenly Father, we approach You this morning with humble hearts. We acknowledge that You alone are sufficient for every good thing and, therefore, You alone can and will guide the hearts of those who trust in You. As we prepare for a day of ideas, discussion, and decisions, we entreat You to help us guard what You have entrusted to us. Lord, we ask that You give us ears to hear Your divine instruction. We ask that You give us eyes to see clearly what is the right thing to do. We ask that You give us mouths which speak the truth unashamedly. And, we ask that You give us hands to faithfully serve Your people and to do only that which brings You glory and honor. Today, give Your servants, whom You have appointed, the knowledge to know the bad from the good and the wisdom to discern the good from the best. We invite You here to govern us as we propose to govern others. And in all this, may You, O God, be exalted, not only in this place, but throughout our whole state and nation as well. We pray in the holy name of our Savior, Jesus Christ. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

CO-AUTHORS OF SENATE CONCURRENT RESOLUTION 152

On motion of Senator Rosson and by unanimous consent, Senators Barrientos, Gallegos, Lucio, Luna, Madla, Montford, Truan, and Zaffirini will be shown as Co-authors of S.C.R. 152.

CO-SPONSORS OF HOUSE JOINT RESOLUTION 35

On motion of Senator Patterson and by unanimous consent, Senators Armbrister, Galloway, Lucio, and Truan will be shown as Co-sponsors of H.J.R. 35.

CO-SPONSORS OF HOUSE BILL 399

On motion of Senator Patterson and by unanimous consent, Senators Armbrister, Galloway, Lucio, and Truan will be shown as Co-sponsors of H.B. 399.

CO-SPONSOR OF HOUSE BILL 496

On motion of Senator Whitmire and by unanimous consent, Senator Gallegos will be shown as Co-sponsor of **H.B. 496**.

CO-SPONSOR OF HOUSE BILL 1111

On motion of Senator Rosson and by unanimous consent, Senator Moncrief will be shown as Co-sponsor of **H.B. 1111**.

CO-SPONSOR OF HOUSE BILL 1385

On motion of Senator Sims and by unanimous consent, Senator Armbrister will be shown as Co-sponsor of **H.B. 1385**.

CO-SPONSOR OF HOUSE BILL 2704

On motion of Senator Rosson and by unanimous consent, Senator Moncrief will be shown as Co-sponsor of **H.B. 2704**.

MESSAGE FROM THE HOUSE

House Chamber
May 17, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has adopted the Conference Committee Report on **S.B. 482** by a vote of 68 Ayes, 65 Nays, and 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 1505** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2128** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1271** by a non-record vote.

S.B. 21, Relating to the State Cemetery.

S.B. 49, Relating to persons authorized to place a child for adoption; providing a penalty. (As substituted and amended)

S.B. 59, Relating to removal of restrictions on investment of certain funds in businesses doing business in South Africa.

S.B. 161, Relating to adoption services. (As substituted)

S.B. 187, Relating to fees on conviction to reimburse the state and political subdivisions for overtime pay for peace officers who testify at trial.

S.B. 223, Relating to providing notice to victims of domestic violence before releasing the offender.

S.B. 237, Relating to the regulation of nonagricultural public warehouses.

S.B. 240, Relating to the statutory county courts and statutory probate court in Denton County. (As substituted)

S.B. 248, Relating to the seizure and disposition of certain property under the Parks and Wildlife Code.

S.B. 251, Relating to the handling and marketing of citrus fruits and vegetables and to the produce recovery fund.

S.B. 264, Relating to jury service by deaf or hard of hearing persons.

S.B. 271, Relating to the applicant-violator system of the Texas Surface Coal Mining and Reclamation Act.

S.B. 346, Relating to funds used to compensate victims of crime. (As amended)

S.B. 372, Relating to the continuation and functions of the Department of Agriculture and certain associated entities, including the Texas Agricultural Finance Authority, the Agriculture Resources Protection Authority, the State Seed and Plant Board, and the Produce Recovery Fund Board, and generally to matters regarding agriculture in this state; providing penalties.

S.B. 375, Relating to the creation of municipal courts of record in Pantego.

S.B. 393, Relating to the definition of a liquefied natural gas system.

S.B. 407, Relating to making emergency appropriations for distribution of state money to school districts and certain public institutions and commissions and to emergency reductions in the current appropriations to the Texas Department of Health. (As substituted)

S.B. 524, Relating to the civil liability of certain primary and secondary military schools.

S.B. 542, Relating to allowing certain counties to cancel certain platted subdivisions if the land has not been developed and is likely to be developed as a colonia.

S.B. 686, Relating to the administration of the alcoholic beverage tax stamp program.

S.B. 691, Relating to the appointment of an acting county judge. (As amended)

S.B. 706, Relating to the wearing of seat belts by certain vehicle operators and passengers.

S.B. 768, Relating to the recovery of the costs of administering the state water pollution control revolving fund and additional state revolving funds.

S.B. 774, Relating to participation in, contributions to, and benefits and administration of retirement systems for firefighters in certain municipalities.

S.B. 810, Relating to the certification of Texas agricultural products and production processes by the Department of Agriculture; authorizing the imposition of fees; and providing penalties. (As amended)

S.B. 831, Relating to the lease of property by the Department of Transportation to institutions of higher education.

S.B. 916, Relating to the Comal County Juvenile Board.

S.B. 938, Relating to the terms of court of the 319th District Court.

S.B. 979, Relating to programs to increase the number of primary care physicians and allied health personnel in medically underserved areas of this state. (As amended)

S.B. 980, Relating to the operation on highways of vehicles that are equipped with monitoring devices used in conjunction with mobile navigational systems.

S.B. 981, Relating to the registration of foreign commercial motor vehicles, trailers, and semitrailers. (As amended)

S.B. 988, Relating to state employee donations to sick leave pools.

S.B. 993, Relating to a change in the use by the City of Austin of certain real property currently designated for a public purpose. (As substituted)

S.B. 1067, Relating to assignment pay for police officers in certain municipalities.

S.B. 1146, Relating to citrus fruit maturity standards.

S.B. 1223, Relating to establishing the Center for Ports and Waterways.

S.B. 1231, Relating to the powers and duties of and systems and programs under the Employees Retirement System of Texas. (As substituted and amended)

S.B. 1280, Relating to the creation of statewide preceptorship programs in general internal medicine and general pediatrics and the expansion of primary care residency positions. (As amended)

S.B. 1282, Relating to the authority of the School Land Board to dedicate permanent school fund land for public uses in exchange for nonmonetary consideration.

S.B. 1420, Relating to temporary registration permits for commercial motor vehicles. (As amended)

S.B. 1512, Relating to the implementation of an automated highway-railroad grade crossing enforcement system demonstration project. (As amended)

S.B. 1513, Relating to certain special stops required of motor vehicles at railroad crossings; creating offenses and providing penalties. (As amended)

S.B. 1530, Relating to the rate of the county hotel occupancy tax.

S.B. 1622, Relating to the creation of the County Court at Law No. 3 of Bell County. (As amended)

S.C.R. 55, Requesting the State Medicaid Office to apply for waivers from certain requirements of federal law.

S.C.R. 56, Requesting the State Medicaid Office to take certain actions relating to the Vendor Drug Program.

S.C.R. 57, Directing the State Medicaid Office not to obtain waivers of certain requirements relating to Federally Qualified Health Centers.

S.C.R. 58, Requesting that the State Medicaid Office and the Texas Department of Health take certain actions relating to home and community-based services. (As amended)

S.C.R. 59, Requesting the State Medicaid Office and the Council on Competitive Government to conduct certain studies and audits. (As amended)

S.C.R. 60, Requesting the State Medicaid Office to study the use of Medicaid funds for the health insurance risk pool and medical savings accounts.

S.C.R. 95, Declaring the Mexican free-tailed bat the "Official Flying Mammal" of the State of Texas.

S.B. 146, Relating to membership on community justice councils by state senators and representatives.

S.B. 172, Relating to certain records of transactions conducted under durable powers of attorney. (As amended)

S.B. 221, Relating to the waiver of tuition and fees for students attending courses that are fully funded by federal or other sources. (As substituted)

S.B. 258, Relating to institutions of higher education that may offer alcoholic beverage seller training programs.

S.B. 267, Relating to sex offender registration and public notification of the release of a sex offender into the community; creating offenses and providing criminal penalties. (As amended)

S.B. 286, Relating to persons considered to be a spouse for purposes of the prosecution of sexual assaults.

S.B. 329, Relating to the management of certain wildlife or exotic animals from aircraft; providing penalties. (As amended)

S.B. 361, Relating to the removal of the Guadalupe-Blanco River Authority from the application of the Texas Sunset Act.

S.B. 391, Relating to recovery from certain insureds of payments made by the Texas Property and Casualty Insurance Guaranty Association.

S.B. 622, Relating to the establishment and operation of a domestic relations office; providing a penalty. (As amended)

S.B. 489, Relating to the disclosure of certain information by a person licensed to sell real estate. (As amended)

S.B. 1139, Relating to the duties and responsibilities of the Motor Vehicle Board of the Texas Department of Transportation and of persons under the board's authority; providing penalties. (As amended)

S.B. 1607, Relating to the creation, boundaries, purposes, powers, duties, functions, authority, and financing of the Southwest Denton County Road and Utility District. (As substituted)

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

SENATE RESOLUTION ON FIRST READING

The following resolution was introduced, read first time, and referred to the committee indicated:

S.C.R. 157 by Patterson Administration
Designating the Lone Star Flight Museum of Galveston the Texas Aviation Hall of Fame.

HOUSE BILLS ON FIRST READING

The following bills received from the House were read first time and referred to the committees indicated:

H.B. 467 to Committee on Finance.
H.B. 613 to Committee on State Affairs.
H.B. 1362 to Committee on Health and Human Services.
H.B. 1395 to Committee on Criminal Justice.
H.B. 1598 to Committee on Jurisprudence.
H.B. 1681 to Committee on Natural Resources.
H.B. 1718 to Committee on State Affairs.
H.B. 1758 to Committee on Finance.
H.B. 1777 to Committee on Economic Development.
H.B. 1794 to Committee on State Affairs.
H.B. 1826 to Committee on Natural Resources.
H.B. 1830 to Committee on State Affairs.
H.B. 1832 to Committee on Intergovernmental Relations.
H.B. 1879 to Committee on Jurisprudence.
H.B. 1884 to Committee on Finance.
H.B. 1892 to Committee on Finance.
H.B. 1933 to Committee on Economic Development.
H.B. 1935 to Committee on Natural Resources.
H.B. 1953 to Committee on Criminal Justice.
H.B. 1956 to Committee on Natural Resources.
H.B. 2000 to Committee on Education.

H.B. 2012 to Committee on Natural Resources.
H.B. 2029 to Committee on Jurisprudence.
H.B. 2036 to Committee on Intergovernmental Relations.
H.B. 2037 to Committee on Criminal Justice.
H.B. 2072 to Committee on Economic Development.
H.B. 2083 to Committee on State Affairs.
H.B. 2085 to Committee on Jurisprudence.
H.B. 2113 to Committee on Health and Human Services.
H.B. 2122 to Committee on State Affairs.
H.B. 2133 to Committee on Natural Resources.
H.B. 2138 to Committee on Intergovernmental Relations.
H.B. 2139 to Committee on Natural Resources.
H.B. 2143 to Committee on Intergovernmental Relations.
H.B. 2177 to Committee on Natural Resources.
H.B. 2198 to Committee on Natural Resources.
H.B. 2200 to Committee on State Affairs.
H.B. 2227 to Committee on Finance.
H.B. 2257 to Committee on Economic Development.
H.B. 2263 to Committee on State Affairs.
H.B. 2266 to Committee on State Affairs.
H.B. 2267 to Committee on State Affairs.
H.B. 2296 to Committee on Natural Resources.
H.B. 2342 to Committee on Finance.
H.B. 2345 to Committee on Intergovernmental Relations.
H.B. 2362 to Committee on Economic Development.
H.B. 2377 to Committee on Health and Human Services.
H.B. 2402 to Committee on Health and Human Services.
H.B. 2405 to Committee on Jurisprudence.
H.B. 2422 to Committee on Criminal Justice.
H.B. 2428 to Committee on Criminal Justice.
H.B. 2460 to Committee on State Affairs.
H.B. 2508 to Committee on State Affairs.
H.B. 2677 to Committee on Economic Development.
H.B. 2766 to Committee on Economic Development.
H.B. 3028 to Committee on State Affairs.
H.B. 3164 to Committee on State Affairs.
H.B. 3223 to Committee on Economic Development.
H.B. 3232 to Committee on Intergovernmental Relations.
H.B. 3233 to Committee on Economic Development.

SENATE CONCURRENT RESOLUTION 152

Senator Rosson offered the following resolution:

S.C.R. 152, Commending Belen Robles of El Paso for her contributions to the League of United Latin American Citizens (LULAC).

The resolution was again read.

On motion of Senator Truan and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

The resolution was previously adopted on Friday, May 12, 1995.

(Senator Leedom in Chair)

(President in Chair)

SENATE RESOLUTION 1075

Senator Brown offered the following resolution:

S.R. 1075, Declaring May 15 through 19, 1995, as Texas Law Officers Week and commending the law officers of our state for their outstanding service.

The resolution was read.

On motion of Senator Truan and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Brown and by unanimous consent, the resolution was adopted by a rising vote of the Senate.

(Senator Truan in Chair)

HOUSE CONCURRENT RESOLUTION 175

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 175, Commending Amy Grunwald of New Braunfels for being selected as the 1995 Texas Junior Miss.

WENTWORTH

The resolution was again read.

The resolution was previously adopted on Tuesday, May 16, 1995.

(President in Chair)

CONCLUSION OF MORNING CALL

The President at 10:07 a.m. announced the conclusion of morning call.

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The President announced the time had arrived to consider the executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given yesterday by Senator Bivins.

Senator Bivins moved confirmation of the nominees reported yesterday by the Committee on Nominations, as well as the two nominees severed and left pending on Friday, May 12, 1995.

The President asked if there were requests to sever nominees.

There were no requests offered.

NOMINEES CONFIRMED

The following nominees, reported yesterday by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Members, Texas State Board of Medical Examiners: PENNY ANGELO, Midland County; DR. CARLOS CAMPOS, Comal County; DR. WILLIAM H. FLEMING III, Harris County; DR. MARGARET L. FORD, Harris County; DR. THOMAS D. KIRKSEY, Travis County; DR. SUZANNE PECK LOW, San Patricio County; DR. PAUL G. MEYER, Lubbock County; DR. CHARLES W. MONDAY, JR., Walker County; DR. WILLIAM A. POLLAN, Runnels County; DR. VERNON L. RYAN, Tom Green County; DR. RAYMOND RUSSELL THOMAS, Colorado County.

Members, Board of Protective and Regulatory Services: JON MARTIN BRADLEY, Dallas County; MAURINE DICKEY, Dallas County; CATHERINE CLARK MOSBACHER, Harris County.

Members, Texas Turnpike Authority Board of Directors: TOMAS CARDENAS, JR., El Paso County; NATHELYNE A. KENNEDY, Fort Bend County; MAYOR LORRAINE PERRYMAN, Ector County; JERE W. THOMPSON, JR., Dallas County; LEAHRAY S. WROTEN, Collin County.

Members, Texas Workers' Compensation Insurance Fund Board of Directors: MICHAEL W. BREST, Tom Green County; PATRICIA ANN "PAT" CRAWFORD, Bastrop County; LARRY K. DURRETT, Cherokee County; PAT O'NEAL, Dallas County; FERNANDO REYES, JR., Bexar County; TOMMY G. SALOME, McLennan County; MARTIN H. YOUNG, JR., Montgomery County.

Member, State Banking Board: PATRICIA CRAWFORD PEALE, Cooke County.

Members, Texas School for the Blind and Visually Impaired Governing Board: DR. MICHAEL DAVID CONNOLLY, Nacogdoches County; DR. ROSEANNA CURREY DAVIDSON, Lubbock County; KERRY LEE GOODWIN, Dallas County; EDWARD F. GUERRA, Travis County; MARY SUE STAPLES, Dallas County; FRANKIE D. SWIFT, Runnels County.

Member, The Finance Commission of Texas: JEFF AUSTIN, JR., Cherokee County.

Members, Governor's Advisory Committee on Immigration and Refugees: SALVADOR BALCORTA, El Paso County; KASSAHUN BISLAT, Harris County; NOE B. CALVILLO, Hidalgo County; ANDREW R. DURON, Nueces County; AMALIA DEL ROSARIO MEZO, Dallas County; LILLIAN MIRSKY, Bexar County; JOSE G. MORENO, El Paso County; DR. WALTER H. NGUYEN, Dallas County; PAUL PARSONS, Travis County; RICHARD A. ROSENTHAL, Harris County.

Members, Department of Information Resources Board of Directors: JIM C. BRUNJES, Lubbock County; DR. JENNIFER STAMPER, Dallas County; DOROTHY G. WELLS, Travis County.

Members, International Trade Commission Governing Board: ROBERT W. HSUEH, Dallas County; ROBERT B. REEVES, Shelby County.

Members, Texas State Library and Archives Commission: MAYOR PATRICK HEATH, Kendall County; MARVIN A. RICH, Harris County.

Member, Texas Commission of Licensing and Regulation: JOHN W. "WIL" GALLOWAY, Bee County.

Member, State Preservation Board: JOSEPH F. PINNELLI, Travis County.

Members, Texas State Board of Public Accountancy: K. MICHAEL CONAWAY, Midland County; JERRY A. DAVIS, Harris County; JIMMY LEE MASON, Lubbock County.

Member, Trinity River Authority of Texas Board of Directors: JUDI JONES BENESTANTE, San Jacinto County.

Pending Nominees

Member, Texas Guaranteed Student Loan Corporation Board of Directors: JERRY DON MILLER, Randall County.

Member, Brazos River Authority Board of Directors: EVERET E. KENNEMER III, Brazoria County.

CAPITOL PHYSICIAN

Senator Sibley was recognized and presented Dr. Jack Eidson of Weatherford as the "Doctor for the Day."

The Senate welcomed Dr. Eidson and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

SENATE CONCURRENT RESOLUTION 91 ON SECOND READING

On motion of Senator Cain and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

S.C.R. 91, Urging Congress to enact H.R. 842, the "Truth in Budgeting Act," to take the transportation trust funds out of the General Fund Budget.

The resolution was read second time and was adopted by a viva voce vote.

HOUSE BILL 1399 ON SECOND READING

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1399, Relating to the continuation and functions of the Office of State-Federal Relations and to assistance for acquiring federal grants and other funds.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1399 ON THIRD READING

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1399** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE JOINT RESOLUTION 31 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.J.R. 31, Proposing a constitutional amendment authorizing the exemption from ad valorem taxation of income-producing personal property and mineral interests having a value insufficient to recover the tax administrative costs.

The resolution was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Bivins, Moncrief, and Montford asked to be recorded as "Present-not voting" on the passage of the resolution to third reading.

HOUSE JOINT RESOLUTION 31 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.J.R. 31** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0, Present-not voting 3.

Yeas: Armbrister, Barrientos, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Present-not voting: Bivins, Moncrief, Montford.

The resolution was read third time and was passed by the following vote: Yeas 28, Nays 0, Present-not voting 3. (Same as previous roll call)

HOUSE BILL 366 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 366, Relating to the exemption from ad valorem taxation of income-producing tangible personal property and mineral interests having a value of less than a certain amount.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Bivins, Moncrief, and Montford asked to be recorded as "Present-not voting" on the passage of the bill to third reading.

HOUSE BILL 366 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 366** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 0, Present-not voting 3.

Yeas: Armbrister, Barrientos, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Present-not voting: Bivins, Moncrief, Montford.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Bivins, Moncrief, and Montford asked to be recorded as "Present-not voting" on the final passage of the bill.

MESSAGE FROM THE HOUSE

House Chamber
May 17, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 1856, Relating to the creation of municipal courts of record in White Settlement.

H.B. 3173, Relating to the powers and duties of the Bastrop County Water Control and Improvement District No. 2 relating to the administration of a road utility district in Bastrop County.

H.B. 3181, Relating to the private practice of law by a judge of a statutory county court of Hidalgo County.

H.B. 3186, Relating to the creation, administration, powers, duties, operation, and financing of the El Paso County Municipal Utility District No. 2.

H.B. 3187, Relating to the creation, administration, powers, duties, operation, and financing of the El Paso County Municipal Utility District No. 1.

H.B. 3192, Relating to the appointment and terms of office of the directors of the Gulf Coast Water Authority.

H.B. 3215, Relating to the board of directors of the Harris-Galveston Coastal Subsidence District.

H.B. 3221, Relating to the creation, administration, powers, duties, operation, and financing of the Culberson County Underground Water Conservation District.

H.B. 3222, Relating to the creation of municipal courts of record in River Oaks.

H.B. 3230, Relating to the creation, administration, powers, duties, operations, functions, and financing of the TGP Water Authority.

H.C.R. 166, Encouraging the Department of Public Safety to include additional information regarding alcohol and drug abuse in the Texas Drivers Handbook.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

HOUSE BILL 2376 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2376, Relating to the transfer of certain property from the Texas Department of Public Safety to the City of San Angelo.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2376 ON THIRD READING

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2376** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE

HOUSE BILL 3122 ON SECOND READING

On motion of Senator Turner and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 3122, Relating to debit cards provided to students of public institutions of higher education.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3122 ON THIRD READING**

Senator Turner moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 3122** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1479 ON SECOND READING**

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1479, Relating to tuition and fee exemptions at public institutions of higher education and tuition credits at public and private institutions of higher education for certain students.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1479 ON THIRD READING**

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1479** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1587 ON SECOND READING**

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1587, Relating to the powers and duties of the Texas Public Finance Authority and to the issuance of bonds for certain state projects; validating a prior appropriation.

The bill was read second time and was passed to third reading by a viva voce vote.

(Senator Harris in Chair)

HOUSE BILL 176 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 176, Relating to components of net income used in establishing rates of a gas utility.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Barrientos, Ellis, Gallegos, Rosson, and Whitmire asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 176 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 176** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Armbrister, Bivins, Brown, Cain, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Zaffirini.

Nays: Barrientos, Ellis, Gallegos, Rosson, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 5. (Same as previous roll call)

(Senator Moncrief in Chair)

HOUSE BILL 674 ON SECOND READING

On motion of Senator Turner and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 674, Relating to the eligibility of certain persons to serve as members of an appraisal review board.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 674 ON THIRD READING

Senator Turner moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 674** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 699 ON SECOND READING

On motion of Senator Haywood and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 699, Relating to the eligibility of certain military veterans and other persons with military-related service and survivors of certain military veterans to an exemption from tuition, fees, and charges at a public institution of higher education if the person is in default of an educational loan made under a federal program.

The bill was read second time.

Senator Haywood offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend Section 1 of **H.B. 699** as follows:

- 1) On line 18, delete the word "solely" after the word "extinguished"
- 2) On line 20, after the word "purposes," add "A person is not eligible for the exemption if the person is in default on a loan made or guaranteed for educational purposes by the State of Texas."

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 699 ON THIRD READING

Senator Haywood moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 699** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 869 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 869, Relating to coordinated delivery of health and human services programs.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 869 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 869** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nixon, Patterson, Rosson, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Nelson, Ratliff, Shapiro.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3. (Same as previous roll call)

HOUSE BILL 1136 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1136, Relating to the appointment of guardians of minors and certain incapacitated persons by will or written declaration.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1136 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1136** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

(Senator Truan in Chair)

HOUSE BILL 1341 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1341, Relating to the operation and funding of the Work and Family Policies Clearinghouse.

The bill was read second time.

(President in Chair)

Senator Lucio offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 1341** as follows:

(1) On page 1, line 10, between the words "Subsection (e)" and before the period "," insert the following: "except as provided by subsection (g)"

(2) On page 1, line 15, insert a new subsection (g) to read as follows:

"(g) A local registrar that on March 31, 1995 was charging a fee for the issuance of a certified birth certificate that exceeded the fee charged by the bureau of vital statistics for the same type of certificate may continue to do so but shall not raise this fee until the fee charged by the bureau exceeds the fee charged by the local registrar. A local registrar to which this subsection applies shall charge the additional fee as required under subsection (e)."

The committee amendment was read and was adopted by a viva voce vote.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1341** as follows:

(1) On page 1, line 14, insert the words "copy of a" between the words "certified" and "birth".

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1341 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1341** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1209 REREFERRED

On motion of Senator Gallegos and by unanimous consent, **H.B. 1209** was withdrawn from the Committee on Jurisprudence and was rereferred to the Committee on Criminal Justice.

HOUSE BILL 1687 REREFERRED

On motion of Senator Gallegos and by unanimous consent, **H.B. 1687** was withdrawn from the Committee on Education and was rereferred to the Committee on Criminal Justice.

HOUSE BILL 673 ON SECOND READING

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 673, Relating to the assignment of a former statutory probate court judge.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 673 ON THIRD READING

Senator Henderson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 673** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

H.C.R. 175	H.B. 1226
H.C.R. 69	H.B. 1505
H.C.R. 91	H.B. 2020
H.C.R. 102	H.B. 2093
H.B. 94	H.B. 2283
H.B. 172	H.B. 2507
H.B. 654	H.B. 1271
H.B. 795	H.B. 2182
H.B. 1157	H.B. 3116

HOUSE BILL 668 ON SECOND READING

Senator Bivins asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 668, Relating to civil remedies for deceptive trade practices and certain related consumer claims.

There was objection.

Senator Bivins then moved to suspend the regular order of business and take up **H.B. 668** for consideration at this time.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Barrientos, Truan.

The bill was read second time.

Senator Bivins offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 668** by striking SECTION 16 of the bill (Senate committee printing, page 16, lines 50-65) and substituting the following:

SECTION 16. Section 33.002, Civil Practice and Remedies Code, is amended by adding Subsection (h) to read as follows:

(h) This chapter applies to an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

The amendment was read and was adopted by a viva voce vote.

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 668** as follows:

(1) In SECTION 17 of the bill, strike Article 11.05(c) (House engrossment, page 42, lines 1-6) and substitute:

(c) failing to clearly disclose, in any communication with the debtor, the name of the person to whom the debt has been assigned or is owed at the time of making any demand for money (provided, however, this subsection shall not apply to persons servicing or collecting real estate first lien mortgage loans or credit card debts);

(2) In SECTION 17 of the bill, at the end of Article 11.05(o) (House engrossment, page 43, line 23) strike "[or]" and substitute "or".

(3) In SECTION 17 of the bill, at the end of Article 11.05(p) (House engrossment, page 44, line 3), strike "or" and substitute a period.

(4) In SECTION 17 of the bill, strike Article 11.05(q) (House engrossment, page 44, lines 4-6).

(5) In SECTION 18 of the bill, strike Article 11.10(d) (House engrossment, page 44, lines 14-16) and conform the introductory language in SECTION 18 (House engrossment, page 44, line 9), to this change by striking "and adding Subsection (d)".

(6) Add a new Section 20 to the bill (House engrossment, page 44, between lines 25 and 26) to read as follows:

SECTION 20. Notwithstanding Section 19, the purpose of the amendments to Article 11.05, Title 79, Revised Statutes (Article 5069-11.05, Vernon's Texas Civil Statutes), and Article 11.10(c), Title 79, Revised Statutes (Article 5069-11.10, Vernon's Texas Civil Statutes), is to clarify existing law, and those amendments apply to all civil actions commenced on or after May 30, 1995, or pending on that date.

(7) Renumber subsequent sections accordingly.

The amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 3

1. Amend **H.B. 668** by deleting the existing language from Tex. Ins. Code art. 21.21 Sec. 4(7)(b) (Senate committee printing, page 11, lines 38-44), and substituting the following:

~~[(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;]~~

(b) [(c)] Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to renew, cancelling or limiting the amount of coverage on a policy of insurance covered by Subchapter C, Chapter 5, of this code because of the geographic location of the risk unless:

(1) the refusal, cancellation or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(2) the refusal, cancellation or limitation is required by law or regulatory mandate.

2. Amend H.B. 668 by adding a new Section to read as follows:

SECTION ____ . Amend the Insurance Code by adding a new Article 21.21-8 to read as follows:

ARTICLE 21.21-8. UNFAIR DISCRIMINATION

Sec. 1. Scope. This article shall apply to any person engaged in the business of insurance. "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, county mutual, farm mutual, and any other legal entity engaged in the business of insurance, including agents, brokers, adjusters and life insurance counselors.

Sec. 2. No person shall engage in any unfair discrimination by making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

Sec. 3. (a) A person who has sustained economic damages as a result of another's engaging in unfair discrimination, as defined in Section 2 of this Article, may maintain an action against the person or persons engaging in such acts or practices in a district court in Travis County, Texas, and not elsewhere.

(b) In a suit filed under this Article, any plaintiff who prevails may obtain:

(1) The amount of economic damages plus court costs and attorneys' fees. Court costs may include any reasonable and necessary expert witness fees. If the trier of fact finds that the defendant knowingly committed any acts prohibited by this Article, the court may award a civil penalty in an amount of not more than \$25,000 per claimant; and

(2) An order enjoining such acts or failure to act.

(c) All actions under this Article must be commenced within twelve (12) months after the date on which the plaintiff was denied insurance or the unfair act occurred.

(d) On a finding by the court that an action under this section was groundless and brought in bad faith or brought for the purpose of harassment, the court shall award the defendant reasonable and necessary attorneys' fees.

3. Renumber subsequent SECTIONS of the bill accordingly.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Barrientos and Truan asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 668 ON THIRD READING

Senator Bivins moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 668** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Barrientos, Truan.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

SENATE BILL 1231 WITH HOUSE AMENDMENTS

Senator Armbrister called **S.B. 1231** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **S.B. 1231** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the powers and duties of and systems and programs under the Employees Retirement System of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 805.002, Government Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (g) and (h) to read as follows:

(a) Except as provided by Subsection (h), a [A] member of both the employees retirement system and the teacher retirement system who applies for service or disability retirement from either system may transfer to that system service credit established in the other system if the member has at least three years of service credit in the system from which the member is retiring. If a person whose membership was transferred from the teacher retirement system to the employees retirement system pursuant to Section 43(a), Chapter 812, Acts of the 73rd Legislature, 1993, ceases to hold any position included in the membership of the employees retirement

system before the earlier of the date the person retires or dies, the person's service credit accrued in the teacher retirement system before the date the membership was transferred remains credited in that system, unless the person has withdrawn contributions made for the service.

(b) Except as provided by Subsection (h), a [A] member of both the employees retirement system and the teacher retirement system who has less than three years of service credit in the system in which the person most recently received service credit and at least three years of service credit in the other system may, at the time the person applies for service or disability retirement [from the other system], transfer service credit to the other [that] system from the system in which the person most recently received service credit.

(d) Except as provided by Subsections (e) and (f), the designated beneficiary of a member of the employees retirement system or the teacher retirement system who dies while holding a position included in the membership of the system may make a transfer under Subsection (a) and a reinstatement or purchase under Subsection (c) if the deceased member had at least three years of service credit in the system in which the member was performing service at the time of death. The designated beneficiary may make a transfer under Subsection (b) if the deceased member had less than three years of service credit in the system in which the member was performing service at the time of death. If a member is not survived by a designated beneficiary, an alternate beneficiary, or a beneficiary provided by law or has failed to designate a beneficiary after becoming a member or resuming membership, the personal representative of the member's estate has the same right under this subsection as a designated beneficiary. A transfer of service by the beneficiary or personal representative of a deceased member's estate is not permitted unless the transfer will result in the payment of a death benefit annuity.

(g) To be eligible to make a transfer pursuant to Subsection (d), a person must be the same beneficiary under both retirement systems.

(h) A member applying for occupational disability retirement from the employees retirement system may transfer service credit from the teacher retirement system only if the member was contributing to the employees retirement system at the time the disabling condition occurred.

SECTION 2. Section 805.003, Government Code, is amended to read as follows:

Sec. 805.003. PAYMENTS TO REINSTATE OR PURCHASE SERVICE CREDIT. The cost of reinstating or purchasing service credit under Section 805.002 is determined according to the statutes that govern the reinstatement or purchase of the type of service credit in the system in which it is to be reinstated or purchased. All payments for service credit reinstated or purchased under Section 805.002 must be made before retirement or the first payment of a death benefit annuity, as applicable, or before a later date if allowed for members of the retirement system in which the credit is to be reinstated or purchased.

SECTION 3. Sections 805.007(a) and (b), Government Code, are amended to read as follows:

(a) A person who transfers service credit under this chapter forfeits all rights to benefits payable by the system from which it is transferred and is not an annuitant of that system for any purpose, including the payment of postretirement increases to annuitants of that system. This subsection does not preclude a person from receiving benefits as a beneficiary of an account not related to the transferred service credit.

(b) Service credit transferred under this chapter is considered as if it had been granted for service performed under the system to which it has been transferred and is used in satisfying minimum service requirements for retirement and in determining the amount of benefits that are based on the amount of a person's service credit:

(1) except that a person's average salary for the purpose of computing an annuity may be determined only from service credit that was originally established in one system and that results in the higher average salary; ~~and~~

(2) except as provided by Section 805.006; ~~and~~

(3) except service credit transferred by a member applying for occupational disability retirement.

SECTION 4. Section 805.008, Government Code, is amended to read as follows:

Sec. 805.008. RESPONSIBILITY FOR BENEFIT PAYMENTS.

(a) Except as provided by Subsection (c), the ~~The~~ system from which a person's service credit is transferred under this chapter shall transfer to the other system, at the time the annuity based on the service credit becomes payable, an amount equal to the portion of the actuarial value of the annuity that represents the percentage of the total amount of the person's service credited in both systems that was credited in the system from which the credit is being transferred.

(b) Except as provided by Subsection (c), the ~~The~~ systems jointly by rule shall adopt actuarial tables and investment assumptions to be used in computing actuarial values under this section.

(c) As an alternative to Subsections (a) and (b), the systems by rule may require the system from which service credit is transferred to pay monthly an amount equal to the portion of the actual value of the monthly payment of the annuity that represents the percentage of the total amount of service credit that is transferred.

(d) For the purpose of computing an amount to be transferred under this section, service credit in either system must be considered as if it were credited under rules of the teacher retirement system determining the amount of service creditable.

(e) ~~(d)~~ An amount transferred under this section is payable from amounts credited to the person's individual account and amounts credited to the account in which the system places state contributions. Except as provided by Subsection (g), an ~~An~~ amount received under this section shall be deposited in the account from which the system receiving the amount pays annuities.

(f) ~~(e)~~ The system to which a transfer is made under this section is responsible for paying the annuity for which the transfer was made,

including the entire amount of any increase in the annuity granted after the transfer.

(g) At the time of the death of a person whose membership was transferred from the teacher retirement system to the employees retirement system pursuant to Section 43(a), Chapter 812, Acts of the 73rd Legislature, 1993, the teacher retirement system shall transfer to the employees retirement system the person's service credit in the teacher retirement system and, if employment with the transferring agency was continuous from the date of transfer to the date of death:

(1) an amount determined under Subsections (a) and (b) or under Subsection (c), if an annuity is paid under Chapter 814; or

(2) the amount of money in the member savings account plus an amount equal to five percent of the person's account balance for each full year of service credited in the teacher retirement system, if a death benefit other than an annuity is paid under Chapter 814.

SECTION 5. Section 805.002(c), Government Code, is amended to read as follows:

(c) Except as provided by Subsections (e) and (f), a member of the employees retirement system or the teacher retirement system who formerly was a member of the other system may reinstate or purchase service credit in the other system for the purpose of making a transfer under Subsection (a) if the member has at least three years of service credit in the system in which the person currently is a member. Except as provided by Subsections (e) and (f), a member of the employees retirement system or the teacher retirement system who formerly was a member of the other system, who before September 1, 1993, transferred at least three years of service credit to the system in which the person currently is a member, and who has at least three years of service credit other than the transferred credit in the system in which the person currently is a member may reinstate or purchase service credit in the other system for the purpose of making a transfer of all service credit to that other system.

SECTION 6. Section 813.104, Government Code, is amended by amending Subsection (d), relettering Subsection (e) as Subsection (g), and adding new Subsections (e) and (f) to read as follows:

(d) Except as provided by Subsection (e), payments [Payments] may not be made under this section:

(1) to establish or reestablish service credit of a person who has retired or died; or

(2) to establish current service under Section 813.201.

(e) The designated beneficiary of a deceased member, or if none exists, the personal representative of the decedent's estate, may establish or reestablish service for which the member was eligible at the time of death if the establishment of the service would result in the payment of a death benefit annuity or an increase in the amount of a death benefit annuity.

(f) The payment for the establishment or reestablishment of service under Subsection (e) must be made in a lump sum and completed before

the first payment of a death benefit annuity, but not later than the 60th day after the date the retirement system receives notice of the death.

(g) [(c)] The retirement system may adopt rules to administer this section.

SECTION 7. Subchapter D, Chapter 813, Government Code, is amended by adding Section 813.305 to read as follows:

Sec. 813.305. MILITARY SERVICE CREDIT GOVERNED BY UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT. The retirement system may adopt rules to comply with the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. Section 4301 et seq.) and other federal laws affecting the crediting of military service.

SECTION 8. Section 813.506, Government Code, is amended by amending Subsections (a) and (c) and redesignating and amending Subsection (e) as Subsection (d) to read as follows:

(a) The Texas Department of Criminal Justice [~~Corrections~~] by rule shall adopt standards for determining eligibility for service credit as a custodial officer, based on the need to encourage early retirement of persons whose duties are hazardous and require them to have routine contact with inmates of or defendants confined in the state jail division of the Texas Department of Criminal Justice [~~Corrections~~] on a regular basis.

(c) The [~~institutional division of the~~] Texas Department of Criminal Justice shall determine a person's eligibility to receive credit as a custodial officer. A determination of the department [~~division~~] may not be appealed by an employee but is subject to change by the retirement system.

(d) [(e)] As part of the audit of [~~the institutional division of~~] the Texas Department of Criminal Justice by the state auditor in accordance with Chapter 321, the state auditor [~~State Auditor~~] may verify the accuracy of reports submitted to the retirement system under this section. The state auditor shall review biennially the standards adopted by the department under Subsection (a).

SECTION 9. Section 813.509, Government Code, is amended to read as follows:

Sec. 813.509. CREDIT FOR ACCUMULATED SICK LEAVE. (a) A member who holds a position included in the employee class of membership during the month that includes the effective date of the member's retirement and who retires based on service or a disability is entitled to service credit in the retirement system for the member's sick leave that has accumulated and is unused on the last day of employment. Sick leave is creditable in the retirement system at the rate of one month of service credit for each 20 days, or 160 hours, of accumulated sick leave. An increment of less than 20 days is not creditable.

(b) A member who holds a position included in the employee class may use sick leave creditable under this section to satisfy service requirements for retirement under Section 814.104 or 814.107 if the sick leave attributed to the eligibility requirements remains otherwise unused on the last day of employment.

(c) Except as provided by Subsection (d), the [The] disbursing officer of each department or agency shall, before the 11th day after the effective date of retirement of one or more employees of the department or agency [of each month], certify to the retirement system:

(1) the name of each person whose retirement from the department or agency, and from state service, became effective during the preceding month; and

(2) the amount of the person's accumulated sick leave on the last day of employment.

(d) The disbursing officer of a department or agency that employs a member who applies for retirement under Subsection (b) shall, not more than 90 or less than 30 days before the effective date of the member's retirement, certify to the retirement system the amount of the member's accumulated and unused sick leave. The officer shall immediately notify the retirement system if the member uses sick leave after the date of certification.

(e) [(e)] On receipt of a certification under Subsection (c) or (d) [(b)], the retirement system shall grant any credit to which a retiring member or retiree who is a subject of the certification is entitled. An increase in the computation of an annuity because of credit provided by this section after a certification under Subsection (c) begins with the first payment that becomes due after certification.

(f) The retirement system shall cancel the retirement of a person who used sick leave creditable under this section to qualify for service retirement if the sick leave is otherwise used by the person before the effective date of retirement.

(g) In this section, "sick leave" does not include credit granted under an agency sick-leave pool or under the Family and Medical Leave Act of 1993 (Pub. L. 103-3).

SECTION 10. Subchapter F, Chapter 813, Government Code, is amended by adding Section 813.510 to read as follows:

Sec. 813.510. CREDIT FOR CERTAIN AGRICULTURAL SERVICE.
(a) An eligible member may, before January 1, 1996, elect to establish service credit in the retirement system for service performed for the Department of Agriculture as an employee of the Federal State Inspection Service of Texas.

(b) A member eligible to establish credit under this section is one who became an employee of or resumed employment with the Department of Agriculture in May 1992 on the creation of the Texas Cooperative Inspection Program.

(c) A member may establish credit under this section by depositing with the retirement system:

(1) a contribution based on the member's monthly compensation during the period of service for the Department of Agriculture as an employee of the Federal State Inspection Service of Texas and computed for the number of months for which credit is sought at the combined contribution rates required during the period for the state and employee members of the system for new service;

(2) interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date the service was performed to the date of deposit; and

(3) any membership fees required of members of the system during the period of the service.

(d) An election under this section must be filed with the retirement system on a form provided by the system. Credit may be established under this section by a lump-sum payment or by payments authorized by Section 813.104 or 813.105.

(e) The retirement system shall deposit the compensation contribution in the member's individual account in the employees saving account, interest in the state accumulation account, and membership fees in the expense account.

(f) The retirement system shall determine the amount to be deposited in each case and may not grant service credit to a member under this section until the member provides proof of eligibility for the credit that is satisfactory to the retirement system.

SECTION 11. Section 814.003, Government Code, is amended by adding Subsection (e) to read as follows:

(e) If a person elects to receive a standard disability retirement annuity and dies during the first calendar month that begins after the effective date of the person's retirement, the person is considered to have been a contributing member at the time of death.

SECTION 12. Section 814.004, Government Code, is amended to read as follows:

Sec. 814.004. WHEN BENEFITS ARE PAYABLE. A monthly annuity payable to a retiree or beneficiary is payable to that person through the month in which the person dies. A continuation of an optional annuity or the payment of a death or survivor benefit annuity begins with payment for the month following the month in which the death occurs. [An annuity provided by this chapter accrues for the period beginning on the first day of the month that begins after the month in which a person dies or retires, as applicable, and ending, except as otherwise provided by this chapter, on the day the person who receives the annuity dies.]

SECTION 13. Subchapter A, Chapter 814, Government Code, is amended by adding Sections 814.006 and 814.007 to read as follows:

Sec. 814.006. SIMULTANEOUS DEATH OF MEMBER AND BENEFICIARY. When a member or annuitant and the beneficiary of the member or annuitant have died within a period of less than 120 hours, the member or annuitant is considered to have survived the beneficiary for the purpose of determining the rights to amounts payable under this subtitle on the death of the member or annuitant.

Sec. 814.007. BENEFICIARY CAUSING DEATH OF MEMBER OR ANNUITANT. (a) A benefit payable on the death of a member or annuitant may not be paid to a person convicted of causing that death but instead is payable as if the convicted person had predeceased the decedent.

(b) A person who becomes eligible under this section to select death or survivor benefits may select benefits as if the person were the designated beneficiary.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to change the recipient of benefits under this section unless it receives actual notice of the conviction of a beneficiary. However, the retirement system may delay payment of a benefit payable on the death of a member or annuitant pending the results of a criminal investigation and of legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of causing the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated; and

(2) has no appeal of the conviction pending and the time provided for appeal has expired.

SECTION 14. Sections 814.107(b) and (f), Government Code, are amended to read as follows:

(b) The standard service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer is an amount computed on the basis of the member's average monthly compensation for that service for the 36 highest months of compensation, times the sum of the percentage factor used in the computation of a standard service retirement annuity under Section 814.105 plus .5 percent. [a percentage derived from the following table:

<u>Years of Law Enforcement or</u>	<u>Percentage of Average</u>
<u>Custodial Officer Service Credit</u>	<u>Monthly Compensation</u>
[at least 20 but less than 21	50 percent
[at least 21 but less than 22	52 percent
[at least 22 but less than 23	54 percent
[at least 23 but less than 24	56 percent
[at least 24 but less than 25	58 percent
[at least 25 but less than 26	60 percent
[at least 26 but less than 27	62 percent
[at least 27 but less than 28	64 percent
[at least 28 but less than 29	66 percent
[at least 29 but less than 30	68 percent
[at least 30 but less than 31	70 percent
[at least 31 but less than 32	71 percent
[at least 32 but less than 33	72 percent
[at least 33 but less than 34	73 percent
[at least 34 but less than 35	74 percent
[at least 35 but less than 36	75 percent
[at least 36 but less than 37	76 percent
[at least 37 but less than 38	77 percent
[at least 38 but less than 39	78 percent
[at least 39 but less than 40	79 percent
[40 or more	80 percent]

(f) The standard combined service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer may not exceed 100 ~~[80]~~ percent of the higher of the average compensation computed under Section 814.105 or the average compensation computed under Subsection (b).

SECTION 15. Section 814.108, Government Code, is amended by adding Subsection (g) to read as follows:

(g) Except as provided by Section 814.1081, a person who selected an optional service retirement annuity approved by the board of trustees or an optional service retirement annuity described by Subsection (c)(1) or (c)(2) may not change or revoke a beneficiary designation after the person's effective date of retirement.

SECTION 16. Sections 814.207(b), (d), and (e), Government Code, are amended to read as follows:

(b) Except as provided by Subsection (c), an occupational disability retirement annuity under this section is an amount, but not more than 100 ~~[80]~~ percent, computed on the basis of the officer's monthly compensation at the time of the disabling injury or disease, times a percentage derived by application of ~~[the table provided by]~~ Section 814.107(b).

(d) The portions ~~[portion]~~ of the annuity under this section payable from the law enforcement and custodial officer supplemental retirement fund are ~~[is]~~ the amount remaining after deduction of any amount payable under Section 814.206, except the portion of an amount that exceeds the minimum payments provided by Section 814.206(b) and that is made for service other than as a law enforcement or custodial officer and any amount by which an annuity is increased under Subsection (e).

(e) If a retiring member or retiree under this section presents evidence satisfactory to the retirement system that the person's condition makes the person incapable of gainful occupation and is considered a total disability under federal social security law, the retirement system shall increase the person's occupational disability retirement annuity to 100 percent of the officer's monthly compensation at the time of the disabling injury or disease. [If Section 815.405 is held to be invalid by a court of competent jurisdiction and the decision becomes final, an annuity may not be paid under this section.]

SECTION 17. Section 814.301, Government Code, is amended by adding Subsection (e) to read as follows:

(e) A beneficiary designation that names a former spouse as beneficiary is invalid for purposes of this section unless the designation is made after the date of the divorce.

SECTION 18. Section 814.302(a), Government Code, is amended to read as follows:

(a) If a member eligible to select a death benefit plan under Section 814.301 dies without having made a selection, or if a selection cannot be made effective, the member's designated beneficiary ~~[surviving spouse]~~ may select a plan in the same manner as if the member had made the selection. If there is no designated beneficiary ~~[surviving spouse]~~, the

personal representative of the decedent's estate may make the selection for the benefit of the decedent's heirs or devisees. In lieu of selecting a death benefit plan, the designated beneficiary ~~[surviving spouse]~~ or, if there is none, the personal representative of the decedent's estate, may elect to receive a refund of contributions and any applicable payment under Section 814.401.

SECTION 19. Sections 814.401(b) and (d), Government Code, are amended to read as follows:

(b) The benefit provided by this section is payable to the beneficiary designated by the member under Section 814.403(b) ~~[a person designated by the member in a signed document filed with the retirement system]~~. If a member does not designate a beneficiary or if the beneficiary designation cannot be made effective ~~[does not survive the member]~~, the benefit is payable to the member's estate.

(d) A death benefit may not be paid under this section if, at the time of death, a death benefit annuity ~~[under Section 814.301]~~ became effective.

SECTION 20. Section 814.403, Government Code, is amended to read as follows:

Sec. 814.403. RETURN OF CONTRIBUTIONS. (a) Except as provided by Subsection (d) ~~[(c)]~~, if a member dies before retirement, the amount in the member's individual account in the employees saving account at the time of death is payable as a lump-sum death benefit.

(b) Except as provided by Subsection (c), the ~~[The]~~ benefit provided by this section is payable to a person designated by the member in a signed and witnessed document filed with the retirement system before the member's death. A designation, change, or revocation of a beneficiary in a will or other document not filed with the retirement system is not effective. If a member does not designate a beneficiary or if the beneficiary designation cannot be made effective ~~[does not survive the member]~~, the benefit is payable to the member's estate.

(c) A beneficiary designation that names a former spouse as beneficiary is invalid for purposes of this section unless the designation is made after the date of the divorce.

(d) A death benefit may not be paid under this section if, at the time of death, a death benefit annuity ~~[under Section 814.301]~~ became effective.

SECTION 21. Section 814.501, Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The benefit provided by this section is payable to a person designated by the retiree in a signed and witnessed document filed with the retirement system before the retiree's death. A designation, change, or revocation of a beneficiary in a will or other document not filed with the retirement system is not effective. If a retiree does not designate a beneficiary or if the beneficiary designation cannot be made effective ~~[does not survive the retiree]~~, the benefit is payable to the retiree's estate.

(c) A beneficiary designation that names a former spouse as beneficiary is invalid for purposes of this section unless the designation is made after the date of the divorce.

SECTION 22. Sections 814.603(a) and (d), Government Code, are amended to read as follows:

(a) The retirement system shall make a supplemental payment as provided by Subsection (d) to persons whose annuities are described by Section 814.107, 814.207, 814.305, or 814.601(a) and that are based on service retirements, disability retirements, or deaths. This supplemental payment is in addition to the regular monthly annuity payment. Each person who receives an annuity described by this subsection is entitled to receive one payment equal to 10 percent of one month's annuity payment for each fiscal year that preceded or includes the effective date of the requirement or authorization under Subsection (d) and [before the fiscal year beginning September 1, 1993,] in which the annuity has been paid. A supplemental payment may not exceed 350 percent of a monthly annuity. [Only a person whose annuity began in the fiscal year ending August 31, 1993, or earlier is eligible for the supplemental payment.] Supplemental payments under this subsection must comply with Section 811.006.

(d) The retirement system shall make a supplemental payment under this section in the fiscal year ending August 31, 1997. The board of trustees may by rule authorize similar supplemental payments in succeeding [the] fiscal years [year ending August 31, 1995], if the payments are in compliance with Section 811.006.

SECTION 23. Section 815.006, Government Code, is amended to read as follows:

Sec. 815.006. COMPENSATION; EXPENSES. (a) Notwithstanding Subchapter C of Chapter 659, trustees [Trustees] who are contributing members of the retirement system serve without compensation but are entitled to reimbursement for all actual and necessary expenses that they incur in the performance of official board duties.

(b) Notwithstanding Subchapter C of Chapter 659, subject [Subject] to the approval of the board of trustees, trustees who are not contributing members of the retirement system may receive:

(1) compensation; and

(2) reimbursement for all actual and necessary expenses that they incur in the performance of official board duties.

SECTION 24. The heading of Section 815.110, Government Code, is amended to read as follows:

Sec. 815.110. AUDITS [MANAGEMENT AUDIT].

SECTION 25. Section 815.110, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The board of trustees annually shall select an independent auditor to perform a financial audit of the retirement system. The selection shall be made under a competitive bidding process in which the state auditor is eligible to bid.

SECTION 26. Section 815.301(b), Government Code, is amended to read as follows:

(b) The board of trustees may delegate its authority under Subsection (a) to the executive director. The board of trustees or the executive director may, under the standard of care provided by Section 815.307,

invest and reinvest any of the retirement system's assets and may commingle assets of the trust fund and the law enforcement and custodial officer supplemental retirement fund with the assets of the Judicial Retirement System of Texas Plan Two for investment purposes, as long as proportionate ownership records are maintained and credited. Investments may include home office facilities, including land, equipment, and office building, used in administering the retirement system.

SECTION 27. Subchapter F, Chapter 815, Government Code, is amended by adding Section 815.511 to read as follows:

Sec. 815.511. APPEAL OF ADMINISTRATIVE DECISION. A person aggrieved by a decision of any retirement system administered by the board of trustees denying or limiting membership, service credit, or eligibility for or the amount of benefits payable by a system may appeal the decision to the board. The appeal is a contested case under the administrative procedure law, Chapter 2001. On judicial appeal the standard of review is by substantial evidence.

SECTION 28. (a) Except as provided by Subsections (b) and (c) of this section, annuities that are described by Section 814.107, 814.207, 814.305, or 814.601(a), Government Code, and are based on service retirements, disability retirements, or deaths that occurred before September 1, 1995, are increased by 12.5 percent.

(b) Annuities are increased under Subsection (a) of this section only if the actuary for the Employees Retirement System of Texas certifies, based on an August 31, 1995, actuarial valuation, that all annuity increases and annuity recomputations required or authorized by this Act, together with all other actuarial liabilities resulting from legislation that is enacted by the 74th Legislature in 1995 before August 31 and that has or will become law, will not cause the time required to amortize the unfunded actuarial liabilities of the retirement system to be increased to a period that exceeds 31 years. For purposes of this subsection, a bill will become law if it has not taken effect but either has been signed by the governor or the time provided for gubernatorial action under Section 14, Article IV, Texas Constitution, has expired without the governor having vetoed the bill. The increase in annuities under Subsection (a) of this section is payable beginning with the first monthly payments of the annuities that become due after the month in which the actuarial certification required by this subsection is made to the board of trustees of the retirement system.

(c) Retirements that occurred under the provisions of Section 814.1051 or 814.1071, Government Code, are not increased by this section.

(d) The board of trustees of the retirement system shall pay the increased annuities provided by this section from the retirement annuity reserve account of the retirement system and may transfer to that account from the state accumulation account of the retirement system any portion of the amount that exceeds the amount in the retirement reserve account available to finance the increases in benefits, and that is actuarially determined to be necessary to finance the increases, for the duration of the annuities to which the increases apply.

SECTION 29. (a) A member of the Employees Retirement System of Texas who is an appointed officer of the 74th House of Representatives of the State of Texas, as determined by the house journal, who has at least 28 years of service credit in the retirement system, and who has attained the age of 50 is eligible to make an election under this section.

(b) A member of the Employees Retirement System of Texas who has at least 18 years of service creditable in the retirement system, who has served as the executive head of a legislative service agency, and who has attained the age of 50 is eligible to make an election under this section.

(c) An election under this section must be made in writing and filed with the Employees Retirement System of Texas before January 1, 1996, and is irrevocable after filing. A person who makes an election under Subsection (a) must retire on the first effective retirement date that occurs after the date of filing. After the filing of an election under this section, the retirement system shall consider all the service credit established by the person who makes the election, including service credit established after the date the election is filed, as if it were performed as a member of the elected class of membership.

SECTION 30. (a) The board of trustees of the Employees Retirement System of Texas may increase annuities based on service credited in the employee class of membership for retirements or deaths that occur after August 31, 1995, and before September 1, 1996, if the retirement system's actuary certifies that the adjustment will not cause the time required to amortize the unfunded actuarial liabilities of the retirement system to be increased to a period that exceeds 31 years.

(b) The rate of an adjustment under this section may not exceed the rate provided under Section 28 of this Act. The board may not adopt an adjustment under this section before September 1, 1996. An adjustment under this section does not apply to an annuity until the first anniversary of the beginning of payments of the annuity.

(c) The board of trustees shall pay annuities adjusted as provided by this section in the same manner as annuities increased under Section 28 of this Act are paid.

SECTION 31. Subchapter A, Chapter 830, Government Code, is amended by adding Section 830.0011 to read as follows:

Sec. 830.0011. DEFINITION. Notwithstanding Section 821.001, in this chapter "retirement system" means the Teacher Retirement System of Texas or the Employees Retirement System of Texas, as the context requires.

SECTION 32. Section 830.106, Government Code, is amended to read as follows:

Sec. 830.106. ELIGIBILITY FOR RESUMPTION OF MEMBERSHIP. A participant in the optional retirement program is not eligible for membership in the retirement system unless the person:

(1) terminates employment covered by the optional retirement program; and

(2) becomes employed in the public school system or with a state agency in a position that is not eligible for participation in the optional retirement program.

SECTION 33. Subchapter B, Chapter 832, Government Code, is amended by adding Section 832.102 to read as follows:

Sec. 832.102. RESUMPTION OF FULL-TIME JUDICIAL SERVICE.

(a) A retiree who resumes service as a judicial officer other than by appointment or assignment described in Section 832.101 may not rejoin or receive credit in the retirement system for the resumed service.

(b) The retirement system shall suspend annuity payments to a retiree who resumes service described by this section. A suspension of payments begins on the date a retiree takes the oath of office and ends on a date when:

(1) the retiree no longer holds the office; and

(2) the retiree, or the retiree's beneficiary if the retiree has died, has applied to the retirement system for resumption of payments.

(c) Time during which annuity payments are suspended as provided by this section does not reduce the number of months payments are to be made under an optional benefit plan providing for a specific amount of benefits for a guaranteed number of months after retirement.

(d) Before a retiree takes the oath of office for a position as a judicial officer other than under appointment or assignment described by Section 832.101, the retiree shall notify the retirement system in writing of the resumption of office and the projected dates of service.

SECTION 34. Subchapter B, Chapter 833, Government Code, is amended by adding Section 833.1031 to read as follows:

Sec. 833.1031. MILITARY SERVICE CREDIT GOVERNED BY UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT. The retirement system may adopt rules to comply with the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. Section 4301 et seq.) and other federal laws affecting the crediting of military service.

SECTION 35. Subchapter B, Chapter 838, Government Code, is amended by adding Section 838.1031 to read as follows:

Sec. 838.1031. MILITARY SERVICE CREDIT GOVERNED BY UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT. The retirement system may adopt rules to comply with the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. Section 4301 et seq.) and other federal laws affecting the crediting of military service.

SECTION 36. Sections 3(a)(2) and (5), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(2) "Annuitant" shall mean an officer or employee who retires under:

(A) the jurisdiction of the Employees Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Subtitle B, D, or E of Title 8, Government Code, or

Chapter 803, Government Code, that is based on at least 10 years of service credit or eligibility under Section 814.002 or 814.102, Government Code;

(B) the jurisdiction of the Teacher Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Subtitle C, Title 8, Government Code, or Chapter 803, Government Code, that is based on at least 10 years of service credit, whose last state employment prior to retirement, including employment by a public community/junior college, was as an employee of a department whose employees are authorized to participate in the Texas employees uniform group insurance program ~~[the Teacher Retirement System of Texas; school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, the Texas Higher Education Coordinating Board, or an institution of higher education];~~

(C) the optional retirement program established by Chapter 830, Government Code, and either receives an annuity or is eligible to receive an annuity under that program, if the person's last state employment before retirement, including employment by a public community/junior college, was as an ~~[officer or]~~ employee of a department whose employees are authorized to participate in the Texas employees uniform group insurance program and if the person either:

(i) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas or the Employees Retirement System of Texas based on at least 10 years of service credit had the person not elected to participate in the optional retirement program; or

(ii) is disabled as determined by the Employees Retirement System of Texas ~~[the Texas Higher Education Coordinating Board or an institution of higher education]; or~~

(D) any other federal or state statutory retirement program to which an institution of higher education has made employer contributions, if the employee has met service requirements, age requirements, and other applicable requirements comparable to the requirements for retirement under the Teacher Retirement System of Texas, based on at least 10 years of service credit~~;~~ ~~and if the person either:~~

~~[(i) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas based on at least 10 years of service credit had the person not elected to participate in the optional retirement program; or~~

~~[(ii) is disabled].~~

(5)(A) "Employee" shall mean any appointive or elective ~~[state]~~ officer or employee in the service of the State of Texas, including an employee of an institution of higher education:

(i) who is retired or retires and is an annuitant under the jurisdiction of the Employees Retirement System of Texas, pursuant to Subtitle B, D, or E;~~;~~ ~~or Chapter 803, Title 8, Government Code;~~

(ii) who is retired or retires and is an annuitant under the jurisdiction of the Teacher Retirement System of Texas, pursuant to Subtitle C, Title 8, Government Code, or pursuant to Chapter 803, Government Code, and whose last employment with the state prior to retirement, including employment by a public community/junior college, was as an employee of a department whose employees are authorized to participate in the Texas employees uniform group insurance program [the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, the Texas Higher Education Coordinating Board, or an institution of higher education, or who is retired or retires and is an annuitant under the optional retirement program established by Chapter 830, Government Code, if the person's last state employment before retirement, including employment by a public community/junior college, was as an officer or employee of the Texas Higher Education Coordinating Board, or an institution of higher education, and if the person either:

[(a) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas had the person not elected to participate in the optional retirement program; or

[(b) is disabled];

(iii) who is retired or retires and is an annuitant under the optional retirement program established by Chapter 830, Government Code, if the person's last state employment before retirement, including employment by a public community/junior college, was as an employee of a department whose employees are authorized to participate in the Texas employees uniform group insurance program, and if the person either:

(a) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas or the Employees Retirement System of Texas had the person not elected to participate in the optional retirement program; or

(b) is disabled as determined by the Employees Retirement System of Texas;

(iv) [(ii)] who receives [his] compensation for services rendered to the State of Texas, other than an employee of an institution of higher education described by this subdivision, on a warrant issued pursuant to a payroll certified by a department or by an elected or duly appointed officer of this state;

(v) [(iii)] who receives payment for the performance of personal services on a warrant issued pursuant to a payroll certified by a department and drawn by the State Comptroller of Public Accounts upon the State Treasurer against appropriations made by the Texas Legislature from any state funds or against any trust funds held by the State Treasurer or who is paid from funds of an official budget of a state department, rather than from funds of the General Appropriations Act;

(vi) [(iv)] who is appointed, subject to confirmation of the senate, as a member of a board or commission with

administrative responsibility over a statutory agency having statewide jurisdiction whose employees are covered by this Act;

(vii) [(v)] who is a member of the governing body of an institution of higher education, as that term is defined by this Act [Section 61.003, Education Code, including subsequent amendments to that section];

(viii) [(vi)] who is a member of the State Board of Education;

(ix) [(vii)] who receives compensation for services rendered to an institution of higher education on a warrant or check issued pursuant to a payroll certified by an institution of higher education or by an elected or duly appointed officer of this state, and who is eligible for participation in the Teacher Retirement System of Texas; or

(x) [(viii)] who receives compensation for services rendered to an institution of higher education as provided by this subdivision but is not permitted to be a member of the Teacher Retirement System of Texas because the person is solely employed by an institution of higher education that as a condition of employment requires the person to be enrolled as a student in an institution of higher education in graduate-level courses and who is employed by the institution at least 20 hours a week.

(B) Persons performing personal services for the State of Texas as independent contractors shall never be considered employees of the state for purposes of this Act.

SECTION 37. Section 4B, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subsection (a-1) and amending Subsection (c) to read as follows:

(a-1) If the executive director determines that a participant has obtained coverage under any program provided under the authority of this Act through the use of any material misrepresentation or fraud or has fraudulently induced the extension of coverage by making a material misrepresentation or by supplying false information on any application for coverage or related documentation or in any communication, the executive director may rescind the coverage to the date of the inception of the coverage or to the date of the fraudulent act or material misrepresentation, deny any claim arising out of the fraudulently induced coverage, or both. Remedies available to the executive director under this subsection are in addition to and independent of any expulsion action that may be instituted under Section 13A of this Act. A decision of the executive director under this subsection may be appealed to the trustee as provided by Subsection (c) of this section.

(c) A decision by the executive director under Subsection (a) or (a-1) of this section may be appealed only to the trustee. An appeal to the trustee is a contested case under the administrative procedure law, Chapter 2001, Government Code. Standing to pursue an administrative appeal under this section is limited to employees, annuitants, and covered dependents participating in the Texas employees uniform group insurance

program or, after the death of a participant, to the participant's estate, personal representative, heirs at law, or designated beneficiary [~~Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)~~].

SECTION 38. Section 5(f), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(f) The trustee, in its sole discretion and in accordance with the requirements of this section, shall determine those plans of coverages for which the trustee does not intend to purchase insurance and which it intends to provide directly from the Employees Life, Accident, and Health Insurance and Benefits Fund. Any plan of coverages for which the trustee does not purchase insurance but provides under this Act on a self-funded basis is exempt from any other insurance law unless the law expressly applies to this plan or this Act. The trustee shall make an estimate of the unrestricted balance of the fund. Unless such estimated unrestricted balance is equal to at least 10 percent of the total benefits expected to be provided directly from the fund as a result of claims incurred during the fiscal year, the trustee shall include in the contributions required the amount necessary to establish an unrestricted balance in the fund of not less than 10 percent. The unrestricted balance shall be placed in a contingency reserve fund to provide for adverse fluctuations in future charges, claims, costs, or expenses of the program.

SECTION 39. Section 13A, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 13A. EXPULSION FROM GROUP INSURANCE PROGRAM.

(a) After notice and hearing as provided by this section, the trustee may expel from participation in the Texas employees uniform group insurance program any employee, annuitant, or dependent who submits a fraudulent claim or application for coverage under or has defrauded or attempted to defraud any health maintenance organization or insurance or benefits plan offered under the program.

(b) On receipt of a complaint or on its own motion, the trustee may call and hold a hearing to determine whether ~~or not~~ an employee, annuitant, or dependent has submitted a fraudulent claim or application for coverage under or has defrauded or attempted to defraud any health maintenance organization or insurance or benefits plan offered under the Texas employees uniform group insurance program.

(c) A proceeding under this section is a contested case under the administrative procedure law, Chapter 2001, Government Code [~~Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)~~].

(d) At the conclusion of the hearing, if the trustee issues a decision that finds that the accused employee, annuitant, or dependent submitted a fraudulent claim or application for coverage or has defrauded or attempted to defraud any health maintenance organization or insurance or benefits

plan offered under the Texas employees uniform group insurance program, the trustee shall expel the employee, annuitant, or dependent from participation in the program.

(e) An appeal of a decision of the trustee under this section is under the substantial evidence rule.

(f) An employee, annuitant, or dependent expelled from the Texas employees uniform group insurance program may not participate in a health maintenance organization or be insured under [by] any [health] insurance or benefits plan offered by the program for a period determined by the trustee of not more than five years from the date the expulsion from the program takes effect.

SECTION 40. Section 14(a), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The trustee shall use the amount appropriated for employer contributions in accordance with Section 15 of this Act ~~[and Subsection (a-1) of this section]~~ to fund the basic coverage. The trustee may equitably allocate to each health benefits plan the employer contributions that would be required to fund basic health coverage for participants in the plans to the extent funds are available. In allocating the employer contributions among plans, the trustee shall consider the relevant risk characteristics of each plan's enrollment, including demographic variations in the use and cost of health care and the prevailing cost patterns in the area in which the plan operates. The allocation must be reasonable and set in a manner which assures employees a fair choice among health benefit plans providing a basic plan. The contribution set for each employee shall be within the total amount appropriated in the General Appropriations Act.

SECTION 41. Section 609.507, Government Code, is amended to read as follows:

Sec. 609.507. FINANCIAL INSTITUTION AS QUALIFIED VENDOR.

~~[(a)] Each bank or savings and loan association that is a qualified vendor is not required to comply with Chapter 404 with regard to deferrals and investment income, but shall comply with plan rules that deal with vendors and investment products [shall:~~

~~[(1) treat deferred amounts and investment income as state funds; and~~

~~[(2) comply with Chapter 404.~~

~~[(b) The state treasurer shall monitor each bank or savings and loan association that is a qualified vendor for compliance with Chapter 404. The state treasurer shall immediately notify the board of trustees of a violation of that chapter that the treasurer observes.~~

~~[(c) The board of trustees is entitled to rely on the supervision of the state treasurer].~~

SECTION 42. The following provisions are repealed:

(1) Section 814.107(h), Government Code;

(2) Section 815.108, Government Code;

(3) Section 815.403(g), Government Code; and

(4) Section 14(a-1), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code).

SECTION 43. (a) The Employees Retirement System of Texas shall recompute each annuity that is based on the service of a person who has retired under Section 814.1071, Government Code, to include an amount, proportional to the amount authorized for each year of credit under Section 814.107, Government Code, for each whole month of credit as a law enforcement or custodial officer that was not used in the original computation of the annuity.

(b) The increases in annuities provided by this section are payable, from the law enforcement and custodial officer supplemental retirement fund, beginning with the first payments of the annuities that become due after the month in which the retirement system's actuary certifies to the board of trustees that the increases will not cause the time required to amortize the unfunded actuarial liabilities of the retirement system to be increased to a period that exceeds 31 years.

SECTION 44. The Judicial Retirement System of Texas Plan One shall suspend payments of an annuity to any retiree who before the effective date of this Act resumed service for which a suspension is required by Section 832.102, Government Code, as added by this Act. The suspension shall apply beginning with annuity payments that become due in the month after the month in which this section takes effect and ending as provided by Section 832.102.

SECTION 45. This Act takes effect August 28, 1995, except Section 8, which takes effect September 1, 1995.

SECTION 46. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend C.S.S.B. 1231 as follows:

(1) Between SECTIONS 38 and 39 of the bill (House committee report, page 33, between lines 24 and 25), insert the following appropriately numbered section:

SECTION ____ . Section 13(c), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(c) Unless expelled from the program under Section 13A of this Act, each part-time employee and each employee of an institution of higher education who is described by Section 3(a)(5)(A)(viii) of this Act is eligible for participation in the group programs provided under this Act upon execution of appropriate payroll deduction authorization for the required payment of premiums. An institution of higher education shall, at the time of employment, notify each employee of the institution who is described by Section 3(a)(5)(A)(viii) of this Act of the employee's eligibility to participate in the group programs provided under this Act.

(2) Between SECTIONS 44 and 45 of the bill (House committee report, page 37, between lines 18 and 19), insert the following appropriately numbered section:

SECTION _____. The change in law made by this Act to Section 13(c), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), applies only to persons who become employed for the first time by a particular institution of higher education during the 1995-1996 or a subsequent academic year.

Floor Amendment No. 1 on Third Reading

Amend C.S.S.B. 1231 on third reading as follows:

(1) Between SECTIONS 34 and 35 of the bill, insert the following appropriately numbered section:

SECTION _____. Section 834.101, Government Code, is amended to read as follows:

Sec. 834.101. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY. (a) A member is eligible to retire and receive a base service retirement annuity if:

(1) the member:

(A) [(1)] is at least 65 years old[; ~~currently holds a judicial office;~~] and has at least eight [10] years of service credited in the retirement system[; ~~the most recently performed of which was for a continuous period of at least one year;~~

[(2) ~~is at least 65 years old and has at least 12 years of service, continuous or otherwise, credited in the retirement system, regardless of whether the member currently holds a judicial office;~~] or

(B) [(3)] has at least 20 years of service credited in the retirement system[; ~~the most recently performed of which was for a continuous period of at least 10 years, regardless of whether the member currently holds a judicial office.~~

(b) A member who meets service requirements provided by Subsection (a)(1)(A) [or (a)(2)] is eligible to retire and receive a service retirement annuity actuarially reduced as provided by Section 834.102(d) from the standard service retirement annuity, if the member is at least 60 years old.

(c) A member's resignation from a judicial office before applying for an annuity does not make the member ineligible for the annuity [~~unless the member applies for an annuity under Subsection (a)(1).~~].

(2) Between SECTIONS 35 and 36 of the bill, insert the following appropriately numbered section:

SECTION _____. Section 839.101, Government Code, is amended to read as follows:

Sec. 839.101. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY. (a) A member is eligible to retire and receive a service retirement annuity if:

(1) the member:

(A) [(1)] is at least 65 years old[; ~~currently holds a judicial office;~~] and has at least eight [10] years of service credited in the retirement system[; ~~the most recently performed of which was for a continuous period of at least one year;~~

~~[(2) is at least 65 years old and has at least 12 years of service, continuous or otherwise, credited in the retirement system, regardless of whether the member currently holds a judicial office]; or~~

~~(B) [(3)] has at least 20 years of service credited in the retirement system[, the most recently performed of which was for a continuous period of at least 10 years, regardless of whether the member currently holds a judicial office].~~

(b) A member who meets service requirements provided by Subsection (a)(1)(A) ~~[or (a)(2)]~~ is eligible to retire and receive a service retirement annuity actuarially reduced as provided by Section 839.102(c) from the standard service retirement annuity, if the member is at least 60 years old.

(c) A member's resignation from a judicial office before applying for an annuity does not make the member ineligible for the annuity ~~[unless the member applies for an annuity under Subsection (a)(1)].~~

(3) Renumber sections of the bill accordingly.

Floor Amendment No. 2 on Third Reading

Amend C.S.S.B. 1231 on third reading as follows:

(1) Between SECTIONS 13 and 14 of the bill, insert the following appropriately numbered section:

SECTION ____ . Subchapter A, Chapter 814, Government Code, is amended by adding Section 814.008 to read as follows:

Sec. 814.008. REVOCATION OF BENEFICIARY BY DIVORCE DECREE. (a) In this section, "divorce decree" means a judgment, decree, order, or qualified domestic relations order, including a document approving a property settlement agreement, that is issued by a court under a domestic relations law of this or another state in conjunction with the dissolution of a marriage and that relates to the marital property rights of a retiree and that person's former spouse.

(b) On receipt of a certified copy of a divorce decree that purports to revoke or order the revocation of a designation by a retiree of a beneficiary under this subchapter, accompanied by a written directive from a retiree requesting the change, the retirement system shall change its records in accordance with the directive and decree.

(c) If a divorce decree revokes or orders the revocation of a designation of a beneficiary made by a retiree who retired under an optional retirement annuity described by Section 814.108(c)(1) or (c)(2) or another optional retirement annuity selection approved by the board of trustees by rule, the retiree may select a standard retirement annuity or another beneficiary for the optional retirement annuity selected at the time of retirement. If the retirement system receives from a retiree who retired under an optional retirement annuity a written directive and certified decree, as described in this section, that revokes a beneficiary designation but does not designate a substitute beneficiary, the retiree shall be considered to have selected a standard retirement annuity, and the retirement system shall recompute the annuity of the retiree as a standard annuity. Thereafter, if the retiree designates another beneficiary by written directive filed with the retirement system, the retirement system shall

recompute and reinstate the optional annuity giving effect to the new beneficiary designation on a prospective basis only. A retiree may make a change of beneficiary under this subsection only to a spouse and only once during the retiree's lifetime.

(d) The retirement system shall recompute the annuity of a retiree who makes a selection under Subsection (c) to reflect that selection and shall adjust the annuity as appropriate for early retirement and postretirement increases provided after the date of the retiree's retirement. The retirement system by rule shall provide for the recovery of the actuarial value, if any, of the difference between payments under the original and recomputed annuities by determining the recomputed annuity so that the actuarial present value of the recomputed annuity is equal to the actuarial present value of the original retirement annuity as of the date the retirement system receives the directive to change the beneficiary.

(e) Payment of a recomputed annuity becomes effective the month following receipt by the retirement system of the actuarial recomputation.

(f) The retirement system shall determine, on receipt of a certified copy of a divorce decree purporting to revoke a beneficiary designation under this section, whether the decree clearly revokes or permits the revocation of a beneficiary designation. The retirement system may decline to implement a beneficiary change if it determines that the decree fails to specify clearly that a beneficiary change is within the scope of the decree. The court that issued the decree or that would otherwise have jurisdiction over the matter has jurisdiction to amend the decree to clarify the scope of the decree, even if all other matters incident to the action or proceeding have been fully and finally adjudicated.

(g) A determination by the retirement system under this section may be appealed only to a district court of Travis County, Texas. The retirement system, the board of trustees, and officers and employees of the retirement system are not liable to any person for making or failing to make a beneficiary designation change pursuant to a decree submitted under this section.

(h) The board of trustees of the retirement system may adopt rules it considers necessary to implement this section.

(i) This section expires January 1, 1996.

(2) Between SECTIONS 15 and 16 of the bill, insert the following appropriately numbered section:

SECTION ____ . Section 814.1081, Government Code, is amended by adding Subsection (c) to read as follows:

(c) A person who retired and selected an optional service retirement annuity approved by the board of trustees or an optional service retirement annuity described by Section 814.108(c)(1) or (c)(2) may change the optional annuity selection to the selection of a standard service retirement annuity by filing with the retirement system a request to change the annuity selection, if the person designated as beneficiary has executed since the designation a transfer and release, approved by a court of

competent jurisdiction, of the beneficiary's interest in the annuity and is not currently the retiree's spouse or child. If a retiree files a request as provided by this subsection, the retirement system shall recompute the annuity as a standard service retirement annuity. The right to receive payment of an annuity as adjusted as provided by this subsection begins with the first payment that becomes due after the date a request is filed as provided by this subsection. This subsection expires January 1, 1996.

(3) Between SECTIONS 44 and 45 of the bill, insert the following appropriately numbered section:

SECTION ____ . If the Employees Retirement System of Texas receives a certified copy of a divorce decree that was entered before August 28, 1995, and that purports to revoke or order the revocation of a designation of a beneficiary by a retiree of the retirement system, on receipt of a written directive from the retiree, the retirement system shall change its records and, as appropriate, begin payments of any recomputed annuity, as provided by Section 814.008, Government Code, as added by this Act, or Section 814.1081, Government Code, as amended by this Act, as if the decree were entered after that date.

(4) Renumber sections of the bill accordingly.

The amendments were read.

Senator Armbrister moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on S.B. 1231 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Montford, Leedom, Sibley, and Barrientos.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 753

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas
May 16, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 753 have met

and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

SHAPIRO

HARRIS

NELSON

NIXON

PATTERSON

On the part of the Senate

HARTNETT

ALLEN

MARCHANT

THOMPSON

WOLENS

On the part of the House

A BILL TO BE ENTITLED

AN ACT

relating to the creation of municipal courts of record in Irving.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 30, Government Code, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. IRVING

Sec. 30.0241. APPLICATION. This subchapter applies to the City of Irving.

Sec. 30.0242. CREATION. (a) The governing body of the city may by ordinance create a municipal court of record if it determines that the formation of the court is necessary to provide a more efficient disposition of cases arising in the city. The governing body may by ordinance determine the number of municipal courts of record that are required to dispose of the cases and may establish as many as are needed. The ordinance establishing the courts shall give each court a numerical designation, beginning with "Municipal Court of Record No. 1."

(b) A municipal court of record may not exist concurrently with municipal courts that are not courts of record in the city.

(c) A municipal court of record has no terms and may sit at any time for the transaction of the business of the court.

Sec. 30.0243. APPLICATION OF OTHER LAWS. The general law regarding municipal courts, the general law regarding justice courts on matters not covered by the law regarding municipal courts, and any charter provision or ordinance of the city relating to the municipal court apply to a municipal court of record unless the law, charter provision, or ordinance is in conflict or inconsistent with this subchapter.

Sec. 30.0244. JUDGE. (a) A municipal court of record is presided over by a municipal judge.

(b) If there is more than one municipal judge in the city, the governing body of the city shall appoint one of the judges to be the chief judge.

(c) A municipal judge, including the chief judge, is appointed by the governing body of the city for a term of two years.

(d) A municipal judge must be a licensed attorney in good standing in this state and must have two or more years of experience in the practice of law in this state. The judge must be a citizen of the United States and of this state. The judge shall devote as much time to the office as it requires.

(e) If there is more than one municipal court of record in the city, the judges may exchange benches and may sit and act for each other in any proceeding pending in the courts. An act performed by any of the judges is binding on all parties to the proceeding.

(f) A municipal judge is entitled to a salary from the city, the amount of which is determined by the governing body of the city. The amount of a municipal judge's salary may not be diminished during the judge's term of office. The salary may not be based directly or indirectly on fines, fees, or costs collected by the court.

(g) A municipal judge may be removed from office by the governing body of the city at any time.

(h) A municipal judge shall take judicial notice of state law, city ordinances, and the corporate limits of the city in a case tried before a municipal court of record. A municipal judge may grant writs of mandamus, injunction, and attachment and other writs necessary to the enforcement of the jurisdiction of the court and may issue writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court. A municipal judge, with the approval of all parties, may order a defendant and the victim or complainant in a case before the municipal court to engage in mediation or alternative dispute resolution. The city shall provide mediation services and pay all costs of those services.

(i) The governing body of the city may appoint one or more qualified persons to be available to serve for a municipal judge who is temporarily absent due to illness, family death, or continuing legal or judicial education programs or for any other reason. The chief judge, or the municipal judge if there is no chief judge, shall select one of the persons appointed by the governing body of the city to serve during an absence. An alternate judge, while serving, has all the powers and shall discharge all the duties of a municipal judge. An alternate judge must have the same qualifications as a municipal judge.

Sec. 30.0245. CLERK; OTHER PERSONNEL. The city manager of the city may appoint a clerk of the municipal court of record who may hire, direct, and remove the personnel authorized in the city's annual budget for the clerk's office. The clerk or the clerk's deputies or assistants may keep the records of the municipal courts of record, issue process, and generally perform the duties for the courts that a clerk of the county court exercising criminal jurisdiction is required by law to perform for that court. The clerk shall perform the duties in accordance with statutes, the city charter, and city ordinances.

Sec. 30.0246. COURT REPORTER. (a) The city shall provide a court reporter for the purpose of preserving a record in cases tried before the municipal court of record. The clerk of the court shall appoint the court reporter, who must meet the qualifications provided by law for official court reporters. The reporter shall be compensated by the city in the manner determined by the governing body of the city.

(b) The court reporter may use written notes, transcribing equipment, video or audio recording equipment, or a combination of those methods to record the proceedings of the court. The court reporter shall keep the

record for the 20-day period beginning the date after the last day of the court proceeding, trial, or denial of motion for new trial, whichever occurs last.

(c) The court reporter is not required to record testimony in a case unless the judge or one of the parties requests a record. A party's request for a record must be in writing and be filed with the court before trial. The judge shall tell the defendant that unless the trial is recorded, the defendant waives the right to appeal.

(d) The court clerk may provide that, in lieu of the city's providing a court reporter at trial, proceedings in a municipal court of record may be recorded by a good quality electronic recording device. If the court clerk authorizes the electronic recording, the court reporter need not be present at trial to certify the statement of facts. The recording shall be kept and stored for the 20-day period beginning the day after the last day of the proceeding, trial, or denial of motion for new trial, whichever occurs last. The proceedings that are appealed shall be transcribed from the recording by an official court reporter.

Sec. 30.0247. PROSECUTIONS BY CITY ATTORNEY. All prosecutions in the municipal court of record must be conducted by the city attorney, an assistant or deputy city attorney, or an attorney designated by the city attorney as a special prosecutor.

Sec. 30.0248. JURY. (a) A person who is brought before a municipal court of record and who is charged with an offense is entitled to be tried by a jury of six persons unless that right is waived according to law. The jury shall assess the fine in a case in which it finds the defendant guilty unless the defendant or the state requests the judge to assess a fine.

(b) A juror who serves in the municipal courts of record must meet the qualifications provided by Chapter 62.

Sec. 30.0249. APPEAL. (a) A defendant has the right of appeal from a judgment or conviction in a municipal court of record as provided in this subchapter. The state has the right to an appeal as provided by Article 44.01, Code of Criminal Procedure. The county criminal courts of Dallas County have jurisdiction over an appeal.

(b) The appellate court shall determine each appeal from a municipal court of record conviction on the basis of the errors that are set forth in the defendant's motion for new trial and that are presented in the transcript and statement of facts prepared from the proceedings leading to the conviction. An appeal from the municipal court of record may not be by trial de novo.

(c) To perfect an appeal, the defendant must file with the municipal court clerk a written motion for new trial not later than the 10th day after the date on which judgment is rendered. The motion must set forth the points of error of which the defendant complains. The motion or an amended motion may be amended by leave of court at any time before action on the motion is taken, but not later than the 20th day after the date on which the original or amended motion is filed. The court may for good cause extend the time for filing or amending but the extension may not exceed 90 days from the original filing deadline. If the court does not act on the motion before the expiration of the 30 days allowed for

determination of the motion, the original or amended motion is overruled by operation of law.

(d) To perfect an appeal, the defendant must also give notice of the appeal. If the defendant requests a hearing on the motion for new trial, the defendant may give the notice of appeal orally in open court on the overruling of the motion. If there is no hearing, the defendant must give written notice of appeal and must file the notice with the court not later than the 10th day after the date on which the motion is overruled. The court may for good cause extend that time period, but the extension may not exceed 90 days from the original filing deadline.

(e) The court reporter shall set a reasonable transcript preparation fee. The court clerk shall note the payment of the fee on the docket of the court.

Sec. 30.0250. APPEAL BOND. (a) If the defendant is not in custody, the defendant may not take an appeal until the defendant files an appeal bond with the municipal court of record. The bond must be approved by the court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled. If the defendant is in custody, the defendant shall be committed to jail unless the defendant posts the appeal bond.

(b) The appeal bond must be in the amount of \$50 or double the amount of the fine and costs adjudged against the defendant, whichever is greater. The bond must state that the defendant was convicted in the case and has appealed, must be payable to the state for the use and benefit of the city, and must be conditioned on the defendant's appearance in the court to which the appeal is taken.

Sec. 30.0251. RECORD ON APPEAL. The record on appeal consists of a transcript and, if necessary to the appeal, a statement of facts. The court reporter shall prepare the record from the reporter's record or mechanical or videotape recordings of the proceedings. The appellant shall pay for the cost of the transcription. If the court finds that the defendant is unable to pay or give security for the record on appeal after a hearing in response to an affidavit by the defendant, the court shall order the reporter to prepare the record without charge to the defendant.

Sec. 30.0252. TRANSCRIPT. (a) On the written request of the defendant or the defendant's attorney, the municipal court clerk shall prepare under the clerk's hand and seal a transcript of the municipal court of record proceedings. The transcript must include copies of:

- (1) the complaint;
- (2) material docket entries made by the court;
- (3) the jury charge and verdict in a jury trial;
- (4) the judgment;
- (5) the motion for new trial;
- (6) the notice of appeal;
- (7) written motions and pleas;
- (8) written orders of the court;
- (9) any bills of exception filed with the court;
- (10) the appeal bond; and
- (11) exhibits admitted into evidence.

(b) The clerk may include in the transcript additional portions of the proceedings in the court prepared from mechanical or videotape recordings.

Sec. 30.0253. BILLS OF EXCEPTION. Either party may include bills of exception in the transcript subject to the applicable provisions of the Code of Criminal Procedure. The bills of exception must be filed with the municipal court clerk not later than the 60th day after the date on which the notice of appeal is given or filed.

Sec. 30.0254. STATEMENTS OF FACTS. A statement of facts included in the record on appeal must contain:

(1) a transcript of all or part of the municipal court of record proceedings that are shown by the notes of the court reporter to have occurred before, during, or after the trial, if the transcript is requested by the defendant;

(2) a brief statement of the facts of the case proven at trial as agreed to by the defendant and the prosecuting attorney;

(3) a partial transcript and the agreed statement of the facts of the case; or

(4) a transcript of all or part of the municipal court of record proceedings in the case that is prepared from mechanical or videotape recordings of the proceedings.

Sec. 30.0255. COMPLETION, APPROVAL, AND TRANSFER OF RECORD. (a) Not later than the 60th day after the date on which the notice of appeal is given or filed, the appellant must file with the municipal court clerk:

(1) the statement of facts;

(2) a written description of material to be included in the transcript in addition to the required material; and

(3) any material to be included in the transcript that is not in the custody of the clerk.

(b) On completion of the record, the municipal judge shall approve the record in the manner provided for record completion, approval, and notification in the court of appeals.

(c) After the court approves the record, the clerk shall promptly send it to the appellate court clerk for filing. The appellate court clerk shall notify the defendant and the prosecuting attorney that the record has been filed.

(d) The municipal judge may for good cause extend the time for filing the record.

Sec. 30.0256. BRIEF ON APPEAL. (a) A defendant's brief on appeal from a municipal court of record must present points of error in the manner required by law for a brief on appeal to the court of appeals.

(b) The defendant must file the brief with the appellate court clerk not later than the 15th day after the date on which the transcript and statement of facts are filed with that clerk. The defendant or the defendant's attorney must certify that the brief has been properly mailed to the prosecuting attorney.

(c) The prosecuting attorney must file the appellee's brief, if any, with the appellate court clerk not later than the 15th day after the date on which the defendant's brief is filed.

(d) On filing, each party shall deliver a copy of the brief to the opposing party and to the municipal judge.

(e) The appellate court may in its discretion extend the time for filing briefs.

Sec. 30.0257. COURT RULES. (a) Except as modified by this subchapter, the Code of Criminal Procedure governs the trial of cases before the municipal court of record. The court may make and enforce all rules of practice and procedure necessary to expedite the trial of cases before the court that are not inconsistent with general law.

(b) The appellate courts may make and enforce all rules of practice and procedure that are not inconsistent with general law and that are necessary to expedite the dispatch of appeals from the municipal court of record.

Sec. 30.0258. DISPOSITION ON APPEAL. (a) According to law and the nature of the case, the appellate court may:

- (1) affirm the judgment of the municipal court of record;
- (2) reverse and remand for a new trial;
- (3) reverse and dismiss the case; or
- (4) reform and correct the judgment.

(b) Unless the matter was made an issue in the trial court or it affirmatively appears to the contrary from the transcript or the statement of facts, the appellate court shall presume that:

- (1) venue was proven in the trial court;
- (2) the jury, if any, was properly impaneled and sworn;
- (3) the defendant was arraigned and pleaded to the complaint; and
- (4) the municipal judge certified the charge before it was read to the jury.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. The court shall set forth the reasons for its decision. The appellate court clerk shall mail copies of the decision to the parties and to the municipal judge as soon as the decision is rendered.

Sec. 30.0259. CERTIFICATE OF APPELLATE PROCEEDINGS. When the judgment of the appellate court becomes final, the clerk of that court shall certify the proceedings and the judgment and shall mail the certificate to the municipal court. The court clerk shall file the certificate with the papers in the case and note the certificate on the case docket. If the municipal court of record judgment is affirmed, further action to enforce the judgment is not necessary except to:

- (1) forfeit the bond of the defendant;
- (2) issue a writ of capias for the defendant; or
- (3) issue an execution against the defendant's property.

Sec. 30.0260. EFFECT OF ORDER ON NEW TRIAL. If the appellate court awards a new trial to the defendant, the case stands as if a new trial had been granted by the municipal court of record.

Sec. 30.0261. APPEAL TO COURT OF APPEALS. The defendant has the right to appeal to the court of appeals if the fine assessed against the defendant exceeds \$100 and if the judgment is affirmed by the appellate court. The provisions of the Code of Criminal Procedure relating to direct appeals from a county or a district court to the court of appeals apply to the appeal, except that:

(1) the record and briefs on appeal in the appellate court constitute the record and briefs on appeal to the court of appeals unless the rules of the court of criminal appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the court of appeals.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 686

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 17, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 686** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

BARRIENTOS
ZAFFIRINI

ELLIS
BIVINS
TURNER

On the part of the Senate

HERNANDEZ
CHISUM
ROMO
ELKINS
GUTIERREZ

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1343**

Senator Montford submitted the following Conference Committee Report:

Austin, Texas
May 17, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1343** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

MONTFORD

BIVINS

BROWN

MONCRIEF

WHITMIRE

On the part of the Senate

HIGHTOWER

FARRAR

GRAY

PLACE

TELFORD

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE JOINT RESOLUTION 50**

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 17, 1995

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.J.R. 50** have

met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

BARRIENTOS

ZAFFIRINI

ELLIS

BIVINS

TURNER

On the part of the Senate

HERNANDEZ

CHISUM

ROMO

ELKINS

GUTIERREZ

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

NOTICE OF SESSION TO HOLD LOCAL AND UNCONTESTED BILLS CALENDAR

Senator Harris announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 7:45 a.m. tomorrow and that all bills would be considered on second reading in the order in which they are listed.

SENATE RULE 11.19 SUSPENDED (Posting Rule)

On motion of Senator Sibley and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Economic Development might consider **H.B. 2766** tomorrow.

MEMORIAL RESOLUTIONS

S.R. 1097 - By Turner: In memory of Lucille Riley Steward of Fairfield.

S.R. 1098 - By Turner: In memory of Clifford Pennington of Crockett.

S.R. 1104 - By Barrientos: In memory of Felix C. Scott.

S.R. 1106 - By Wentworth: In memory of First Lieutenant Paul Bowers of San Antonio.

WELCOME AND CONGRATULATORY RESOLUTIONS

S.R. 1094 - By Turner: Recognizing Jennifer Johnson of Houston County for being selected 1994 Miss Texas Farm Bureau.

S.R. 1095 - By Turner: Recognizing Oak Rest Cemetery, along with the sites of Prospect Presbyterian Church and Live Oak Female Seminary, for receiving Official Texas Historical Markers.

S.R. 1096 - By Turner: Recognizing Porter Springs and Porter Springs Cemetery in Houston County for receiving an Official Texas Historical Marker.

S.R. 1099 - By Turner: Congratulating Mr. and Mrs. Jasper Driskell on the occasion of their 60th wedding anniversary.

S.R. 1100 - By Haywood: Recognizing the Bethania Regional Health Care Center in Wichita Falls for its Accreditation with Commendation by the Joint Commission on Accreditation of Healthcare Organizations.

S.R. 1101 - By Barrientos: Recognizing Vince Bland of Austin for his selection as a recipient of the 1995 Governor's Award for Outstanding Volunteer Service.

S.R. 1102 - By Barrientos: Proclaiming May, 1995, as Western Swing Month in Texas.

S.R. 1103 - By Barrientos: Welcoming the delegation from the City of Dalian, the People's Republic of China, on their visit to the capital of Texas.

S.R. 1105 - By Montford: Recognizing Tahoka High School's theatre company on its performance in the 1995 University Interscholastic League One Act Play Contest.

H.C.R. 204 - (Wentworth): Congratulating William Gooch on the occasion of his retirement as director and librarian of the Texas State Library and Archives.

RECESS

On motion of Senator Truan, the Senate at 11:34 a.m. recessed until 7:45 a.m. tomorrow for the Local and Uncontested Bills Calendar.

APPENDIX

REPORTS OF STANDING COMMITTEES

The following committee reports were received by the Secretary of the Senate:

May 16, 1995

ECONOMIC DEVELOPMENT — C.S.S.B. 1473, C.S.S.B. 859, C.S.H.B. 200, C.S.H.B. 1094, H.B. 1586 (Amended), H.B. 1612 (Amended), H.B. 73 (Amended), H.B. 347, H.B. 1605, H.B. 2771, H.B. 331, H.B. 2674, H.B. 2256, H.B. 1422, H.B. 994

JURISPRUDENCE — H.B. 2574, H.B. 824, H.B. 1642 (Amended), H.B. 2866, H.B. 336, H.B. 1481 (Amended), H.B. 2781, H.B. 2673, C.S.H.B. 1774, H.B. 3188, H.B. 2373, H.B. 2463, H.B. 768 (Amended), H.B. 3196, H.B. 2987, C.S.H.B. 2569, H.B. 1943, H.B. 333, H.B. 1551 (Amended), H.B. 1966, H.B. 2401, H.B. 3165, H.B. 1661, H.B. 2042

May 17, 1995

JURISPRUDENCE — C.S.H.B. 418

FINANCE — C.S.H.B. 2129, C.S.H.B. 2726, C.S.H.B. 958

NATURAL RESOURCES — H.B. 2843 (Amended), H.B. 2315 (Amended), H.B. 1964 (Amended), H.B. 1785 (Amended), H.B. 1536, H.B. 1385, H.B. 3053, H.B. 1757, H.B. 2579, H.B. 3226, C.S.H.B. 546

HEALTH AND HUMAN SERVICES — H.B. 1491, H.B. 1495, H.B. 2669, H.B. 2861 (Amended), H.B. 1111 (Amended), H.B. 2704, H.B. 1765, H.B. 2698, C.S.H.B. 1048, H.B. 3120, H.B. 1604, H.B. 2658

CRIMINAL JUSTICE — H.B. 3195, H.B. 1648, H.B. 2289 (Amended), H.B. 308 (Amended), H.B. 552 (Amended)

INTERGOVERNMENTAL RELATIONS — H.B. 741, H.B. 740, H.B. 742 (Amended), H.B. 841, H.B. 828, C.S.H.B. 960, H.B. 1417, H.B. 1454 (Amended), H.B. 1651 (Amended), H.B. 1717, C.S.H.B. 1783, H.B. 1846, H.B. 1810 (Amended), H.B. 1875, H.B. 2432, H.B. 2525, H.B. 2684, H.B. 2686, H.B. 2805, H.B. 2926, H.B. 3198, H.B. 3225, H.J.R. 80

SIGNED BY GOVERNOR

(May 16, 1995)

S.B. 279	(Effective immediately)
S.B. 366	(Effective September 1, 1995)
S.B. 401	(Effective September 1, 1995)
S.B. 872	(Effective September 1, 1995)
S.B. 897	(Effective immediately)
S.B. 1329	(Effective immediately)
S.C.R. 16	
S.C.R. 126	
S.C.R. 132	
H.B. 637	(Effective September 1, 1995)
H.B. 645	(Effective immediately)
H.B. 767	(Effective January 1, 1996)
H.B. 1090	(Effective September 1, 1995)
H.B. 1235	(Effective immediately)
H.B. 1294	(Effective September 1, 1995)
H.B. 1486	(Effective September 1, 1995)
H.B. 1503	(Effective August 28, 1995)
H.B. 1689	(Effective immediately)
H.B. 1737	(Effective September 1, 1995)
H.B. 2028	(Effective immediately)
H.B. 2066	(Effective immediately)
H.B. 2068	(Effective September 1, 1995)
H.B. 2183	(Effective immediately)
H.B. 3168	(Effective August 28, 1995)
H.C.R. 190	H.C.R. 116
H.C.R. 25	H.C.R. 131
H.C.R. 58	H.C.R. 143
H.C.R. 65	H.C.R. 160

H.C.R. 71	H.C.R. 161
H.C.R. 81	H.C.R. 163
H.C.R. 96	H.C.R. 181
H.C.R. 97	H.C.R. 191
H.C.R. 115	H.C.R. 198
	H.C.R. 199

SEVENTY-THIRD DAY

(Continued)

(Thursday, May 18, 1995)

AFTER RECESS

The Senate met at 7:45 a.m. and was called to order by Senator Harris.

LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer announced that the time had arrived for consideration of the Local and Uncontested Bills Calendar.

Pursuant to Senate Rule 9.03(d), the following bills were laid before the Senate, read second time, amended where applicable, passed to engrossment/third reading, read third time, and passed (vote on Constitutional Three-Day Rule and final passage indicated after the caption of each bill):

H.B. 160 (Ratliff) Relating to the regulation of litter by counties. (31-0) (31-0)

Senator Ratliff offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 160** as follows:

On page 1, line 9, insert the following after the period: "The commissioner's court may not adopt regulations under this section concerning the disposal of recyclable materials as defined in Section 361 of the Health and Safety Code."

The committee amendment was read and was adopted by a viva voce vote.

H.B. 321 (Nixon) Relating to a speed limit for school buses. (31-0) (31-0)

H.B. 344 (Wentworth) Relating to the issuance of a commission to certain branch pilots. (31-0) (31-0)

H.B. 635 (Galloway) Relating to territory contained within the Jefferson County Water Control and Improvement District No. 10. (31-0) (31-0)